BOOK NOTICES.

An Essay on Judicial Power and Unconstitutional Legislation. By Brinton Coxe, of the Bar of Philadelphia. Kay & Bro., Phila., 1893, pp. 415.

This is one of the most scholarly and elaborate monographs ever contributed to the study of American constitutional government. It was called out by the positions taken by the Supreme Court of the United States in *The Legal Tender Case*, 110 U. S., 447, to the effect that the power of Congress to borrow money incidentally carries with it power to issue obligations for the money borrowed, in such form, and with such qualities as currency, as accord with the usage of sovereign governments. If, the author argues, Congress was thus clothed with the ordinary powers of sovereign governments, in respect to matters within its jurisdiction, it follows that Congress may fortify its laws, as other sovereignties have, by providing that their validity shall never be called in question by any court, unless such a provision is prohibited by the Constitution. He then argues that such a prohibition is implied in Articles III. Sec. 2, and VI. Sec. 2, and that there the power to declare unconstitutional laws invalid is expressly conferred upon both the State and Federal Courts. In *Marbury* v. *Madison*, 1 Cranch., Marshall rested this power mainly, if not wholly, on an implication, but such a foundation, Mr. Coxe declares, is no longer sufficient to support it against legislative encroachment, under the doctrine of *The Legal Tender Case.* The first project of Art. VI. Sec. 2, he shows clearly to have been put in form by the Congress of the Confederation, a few weeks before the opening of Convention that framed the Constitution, in a resolution declaring that the State legislatures cannot of right pass any acts for explaining, construing, limiting or counteracting any national treaties, "for that on being constitutionally made, ratified, and published, they become in virtue of the Confederation, part of the law of the land, and are not only independent of the will and power of such legislatures, but also binding and obligatory upon them." In the form in which this principle is incorporated in our Constitution, an obligation is expressly imposed on the State judges to decide in controversies involving Federal questions, according to the Constitution of the United States, and the laws made in pursuance of it,

and the treaties of the United States, as the supreme law of the land, that is, the supreme law of their respective State. In Art. III. Sec. 2, the jurisdiction of the Federal Courts is declared in different language, but is certainly not less extensive. It extends to cases arising under the Constitution, or under any Act of Congress, without regard to whether it is or is not enacted in pursuance of the Constitution. That a judicial power of examining into laws to ascertain whether they are in accordance with the fundamental principles of the government existed elsewhere, before the adoption of our Constitution, the author proves by a learned review of foreign precedents, beginning with the Roman Law. Such a jurisdiction, however, was commonly conferred by the legislative power, and revocable at its will; the general maxim of Continental jurisprudence being that *ejus est legem interpretari, cujus est legem condere.* The cases in which the State Courts, before the adoption of the Constitution of the United States, ventured to hold State laws unconstitutional, are reviewed with care, though no mention is made of the Symsbury Case, Kirby 447, in which, in 1785, the Superior Court of Connecticut, following a precedent set by the Supreme Court of Errors, in 1784, held that an Act of the State Legislature purporting to curtail the boundaries of a township which it had previously granted, "could not legally operate" to abridge the property rights of the grantees, without their assent, though it would alter the boundaries of the township as a political corporation.

The Law of Contracts. By Theophilus Parsons, LL. D. Eighth Edition. Edited by Samuel Williston. Little, Brown & Co., Boston, 1893.

Professor Parson's work on contracts has long been a favorite one with the profession by reason of its comprehensiveness; and with instructors and students for the same reason. For it has always in the past answered admirably as a repository of decisions, covering all sides of a legal point, though sometimes without announcing definitely what the law might be upon that point. With students and instructors, it has been a difficult book to use satisfactorily, because of its very indefiniteness. However, the fact that so many subjects are embraced within the three volumes, has more than counteracted the less desirable qualities of the book. Parsons on Contracts has needed, for a long time, a thorough revision, not only of the text, but also of the accompanying notes. In other words, it has needed a revision which would make it a text book of modern law, rather than of the law of 1853. Mr.

William B. Kellen, who edited the Seventh Edition, did not accomplish this result, and we are much disappointed to find that Professor Williston has failed even more signally than did his predecessor. He seems to have regarded the text, as it fell from the pen of Professor Parsons, as something too sacred to be either altered, amended, or repealed. He has not inserted, in the body of the text, even upon his own authority, anything which would show that the law has developed, in any degree, since 1853. Professor Williston seems to have been content to allow the text to stand exactly as it was, and the notes substantially as they were. It is amusing, to say the least, to find, what purports to be a modern text-book, saying, as does Parsons, Vol. II. *p. 172, "Railroad Companies have carried goods but for a short period"; and again on *p. 173, "still more recently, telegraph companies have been established"; and again on *p. 253 "Horse railroads have recently been introduced in our large cities, and are now common." But this flavor of antiquity might be forgiven, were it not that in other respects the law had been and still is incorrectly stated, and former glaring errors have been left uncorrected. For instance, in Vol. III. *p. 190, note 2, there was a most palpable error in the Seventh Edition; the statement of facts following the citation of *Burritt* v. *Belfy*, 47 Conn., 323, referring to some case entirely unlike *Burritt* v. *Belfy*. In the Eighth Edition, this error still remains, though Professor Williston professes to have revised the same. Again, in Vol. II. *p. 233, the rule of Comparative Negligence is allowed to remain as stated by Professor Parsons, save for a short note at the bottom of the page, when the fact is that, outside of Illinois, and to a limited extent in Georgia and Tennessee, the doctrine has no force whatever, except in cases of maritime collisions. And on *p. 232 of the same volume, *Pennsylvania R. R. Co.*, v. *Kerr*, is cited as authority for the statement, "If sparks from an engine set fire to a house, and from this, fire is communicated to another house and destroys it, the company is not liable for this last house; the rule, *causa proxima non remota*, applying," when it is well known that this doctrine has long ago been denied in every other State in the Union, where the question has arisen, excepting New York, and that both there and in Pennsylvania, it has been very much modified. We pass over the antique discussion of Bank Notes, in the sub-division of Tender, under the subject of Defenses, though this portion of the text is practically useless, since the abolition of State banks and the creation of National banks; but we note, with regret, that Professor Williston has failed to correct the misstatement of

Professor Parsons, with reference to the Massachusetts rule of Partial Payments, as contained in *Dean* v. *Williams*, 17 Mass. 417, and cited in Vol. II. *p. 636. We have noticed but a few of the many errors which are in this work, and have expressed but few of the criticisms which might be applied to it. There is a possibility of modernizing Parsons, and making it the valuable text book which its author intended it to be. It is therefore with great disappointment that we find an alleged revision, which substantially does not improve the work at all. We seriously question, whether it is any longer a proper text-book from which to teach the modern Law of Contracts. It never was logical, and only in places was it ever clear. It is now neither logical, clear, nor modern, and for both instructor and student while it is exhaustive, it is also exhausting.

Law of Foreign Corporations. A Discussion of the Principles of Private International Law and of Local Statutory Regulations Applicable to Transactions for Foreign Companies, by William L. Murfree, Jr. Central Law Journal Co., St. Louis, 1893.

Mr. Murfree's brief work illustrates the growing tendency to specialize in the law. The subject of the rights of corporations away from home, has been touched upon by Morawetz, Beach, and Spelling, but no thorough discussion of the law has, to our knowledge, ever before been published. The author has developed his subject in a logical manner and has evidently written as text a digest of the cases which he cites to support his statements. This to our mind is the way a text-book should be written. It is more than a compilation of cases; it indicates a great deal of difficult research together with the more difficult distinguishing and harmonizing of the cited cases. Mr. Murfree's book certainly deserves a place in a corporation lawyer's library.

A Treatise on the Law of Quasi-Contracts. By William A. Keener. Baker, Voorhis & Co , New York, 1893.

By preparing this treatise, Professor Keener has rendered a great service to the profession. The work is thoroughly scientific and is distinguished throughout by accuracy of definition and keenness of analysis. A careful perusal of the book clears away whatever misconceptions one may have entertained in regard to the nature of those legal rights which rest neither in contract nor in tort, but in statutes or in general principles of truth and justice. Confusion of ideas is avoided by exactness in the use of legal terminology. He traces the fallacious classification of quasi-

contracts as contracts of record and implied simple contracts to its origin in the law of remedies, while with extraordinary perspicuity he shows their essential difference. His treatment of the several topics constituting this branch of the law, *e. g.*, recovery of money paid under duress, mistake, or compulsion of law, waiver of tort, liability of infants and *non compotes mentis* for purchased necessaries, etc., etc., is eminently satisfactory. Without approaching diffuseness, the author is exhaustive. We may commend the book as a masterpiece of legal style and learning.

General Digest of the United States, Annual, Vol. VIII., 1893. The Lawyers Co-operative Publishing Co., Rochester, N. Y.

This digest contains as usual the decisions of the principal courts in the United States, England and Canada. It is complete in every particular, containing not only the usual features of arrangement, indexing, cross-references, etc., but others peculiar to this series, which add greatly to the usefulness of such a work. The bibliographic notes, containing a short notice of the leading new books and magazine articles, and the table of cases criticised are of obvious utility. The typography and binding are good and the work is not too bulky for convenient use.

The Origin and Scope of the American Doctrine of Constitutional Law. By James Bradley Thayer. Little, Brown & Co., Boston, 1893.

This little pamphlet contains a very vigorous and clear discussion of the jurisdiction of the courts over constitutional questions. To all citizens who desire to elevate the standard of our legislatures this paper is valuable for its suggestiveness.